

### **REMARKS**

The Office Action mailed November 28, 2003 has been received and the Examiner's comments carefully reviewed. Claims 1, 16-17, 21, 24-25, 29, 32-33, 36-39, 45-46, and 50 have been amended. Claims 53-61 have been added. No new subject matter has been added. Claims 44 and 52 have been cancelled. Claims 1, 2, 4-34, 36-39, 45-51, and 53-61 are currently pending. Applicants respectfully submit that the pending claims are in condition for allowance.

### **Rejections Under 35 U.S.C. §112**

The Examiner rejected claims 1, 2, 4-34 and 45-49 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

In particular, the Examiner stated that the phrase "interlock structure positioned within 5 millimeters of the cell defining region of the implant" was not understood. Applicants note that "within" is a numeric range boundary, and "within 5 mm of the cell defining region" does not suggest that the structure is position inside the region. Nonetheless, Applicants have amended the claims 1, 16-17, 21, 24-25, 29, 32-33, and 45-46 to clarify that the recited structure is located "a distance from" the region, the distance being, for example, at most 5 mm.

The Examiner also noted an antecedent basis error with regards to claim 45. Claim 45 has been amended to correct a typographical error (i.e. "regions" should read "region").

Applicants respectfully request withdrawal of this rejection and submit that claims 1, 2, 4-34, and 45-49 are now in condition for allowance.

### **Rejections Under 35 U.S.C. §102**

The Examiner rejected claims 1, 2, 5, 6, 16-17, 21-25, 36-39, 45-47 and 50-51 under 35 U.S.C. §102(e) as being anticipated by Letendre et al. (U.S. Patent 6,267,783 B1). Applicants respectfully traverse this rejection, but have amended claims 1, 16-17, 21, 36-39, 45-46, and 50 to advance this application to allowance. Applicants reserve the right to pursue the original subject matter via a continuing application.

I. Claims 1, 2, 5, 6, 16-17, 21-25, and 45-47

Each of independent claims 1, 21, and 45 have been amended to clarify that the recited structure is positioned a distance from a cell defining region. In claim 1, the structure is either a female or male interlock structure. In claim 21, the structure is enlargements positioned at terminal ends of the struts. In claim 45, the structure is first interlock structure.

Letendre et al. discloses a stent 10 having a self-expanding member 12 and legs 20. The legs have a proximal end 26 and a distal end 24. A flange 28 is located at the distal end 24 of the legs. The flanges 28 are I-shaped, however, may include any protrusions which are capable of interlocking with grooves 54 of a delivery apparatus 40. Column 8, lines 19-23.

The legs 20 of Letendre cannot be characterized as "interlock structure" or "enlargements" that interlock with grooves of the delivery apparatus 40. Clearly the flanges 28 are intended to interlock with the delivery apparatus 40, not the legs 20. The flanges 28 are not located a distance of at most 5 millimeters from a cell defining region of the stent. Rather, the flanges 28 are located a distance greater than 5 millimeters from a cell defining region of the stent 10.

At least for this reason, Applicants respectfully submit that independent claims 1, 21, and 45, and dependent claims 2, 5, 6, 16-17, 22-25, and 46-47 are patentable.

II. Claims 36-39

Claims 36 and 38 have been amended to clarify that at least a portion of a first interlock structure of the implant is positioned a distance of at most 5 millimeters from a cell defining region of the implant.

For similar reasons as discussed with regards to claim 1, 21, and 45, Applicants respectfully submit that independent claims 36 and 38, and dependent claim 37 and 39 are patentable.

III. Claims 50-51

Claim 50 has been amended to incorporate the subject matter of objected-to claim 52. Applicants respectfully submit that claims 50 and 51 are patentable.

### **Rejections Under 35 U.S.C. §103**

The Examiner rejected claims 4 and 30 under 35 U.S.C. §103(a) as being unpatentable over Letendre et al. (U.S. Patent 6,267,783 B1) in view of Johnson et al. (U.S. Patent 5,817,102). Applicants respectfully traverse this rejection.

Claim 4 depends from claim 1. Claim 30 depends from claim 29. In light of the remarks regarding independent claims 1 and 29, further discussion regarding the independent patentability of dependent claims 4 and 30 is believed to be unnecessary. Applicants submit that dependent claims 4 and 30 are in condition for allowance.

### **Double Patenting**

The Examiner rejected claims 1, 50 and 51 under the judicially created doctrine of obviousness-type double patenting over claims 3, 41, and 42 of U.S. Patent No. 6,623,518. Applicants respectfully traverse this rejection. To obviate the rejection however, a terminal disclaimer of the term extending beyond the term of U.S. Patent 6,623,518 has been filed herewith.

### **Allowable Subject Matter**

The Examiner objected to claims 44 and 52, but indicated that claims 44 and 52 would be allowable if rewritten in independent form incorporating all the limitations of the base claim and any intervening claims. Applicants thank the Examiner for this notification.

New claim 53 incorporates the subject matter of objected-to claim 44 and base claim 21 (including the amendments to claim 21 to overcome the 35 U.S.C. §112 rejection). The subject matter of objected-to claim 52 has been incorporated into base claim 50. Applicants respectfully submit that claims 53 and 50 are in condition for allowance.

The Examiner also objected to claims 29-34, but indicated that claim 29-34 would be allowable if rewritten to overcome the rejections of 35 U.S.C. §112. Applicants have amended claims 29 and 32-33 to overcome said rejections, and respectfully submit that claims 29-34 are in condition for allowance.

The Examiner further objected to claims 18-20, 26-28, 34, 48 and 49. Applicants thank the Examiner for this notification.

#### **New claims 54-61**

New claim 54 recites subject matter similar to that of objected-to claim 44, i.e. an implant having at least two enlargements defining openings.

New claims 55 and 56 recite subject matter similar to that of currently amended claim 50, with second interlock structures that interlock with the openings of the first interlock structures of the stent.

New claims 57-61 recite subject matter similar to that of currently amended claim 44, with first interlock structures being positioned a distance from the cell defining region, the distance being at most equivalent to the cell length of the cells.

Applicants respectfully submit that new claims 54-61 are patentable.

#### **SUMMARY**

It is respectfully submitted that each of the presently pending claims (claims 1, 2, 4-34, 36-39, 45-51, and 53-61) is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed telephone number if it is believed that prosecution of this application may be assisted thereby.

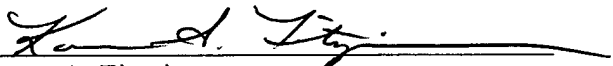
Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct. Applicants reserve the right to raise these arguments in the future.



Date: March 1, 2004

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

  
Karen A. Fitzsimmons  
Reg. No. 50,470  
KAF:cjm